

BETWEEN:

881751 ONTARIO LIMITED

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion in Writing

Before: The Honourable Justice Johanne D'Auray

Parties:

Counsel for the Appellants: Gregory J. Ducharme
Counsel for the Respondent: Charlotte Deslauriers
Tanis Halpape

ORDER

UPON MOTION of the respondent for:

1. An Order striking out certain paragraphs of the Notice of Appeal pursuant to Rule 53 of the *Rules*, namely:
 - a) in the heading “Material Facts – Non-Charter Issues”, the words “–Non-Charter Issues”;
 - b) under the heading “Material Facts – Charter Issues”, paragraphs 13, 14, 15, 16, 17, 18 and 19;
 - c) the heading “Material Facts – Charter Issues”;
 - d) under the heading “Issues to be Decided”, paragraphs 4, 5, 6, 7, and 8;

- e) under the heading “Statutory Provisions”, paragraph 4;
 - f) under the heading “Reasons”, paragraph 5;
 - g) under the heading “Relief Sought”, paragraph 4 (collectively, the paragraphs of the Notice of Appeal cited above are referred to below as the “**impugned paragraphs**”); and
2. the respondent’s costs of this Motion.

UPON READING the materials filed by the appellants’ counsel and the respondent’s counsel;

THIS COURT ORDERS that:

1. The respondent is granted leave to file the Motion to strike parts of the Notice of Appeal of 881751 Ontario Limited and,
2. The respondent’s Motion to strike parts of the Notice of Appeal of 881751 Ontario Limited is allowed on the following bases:

The following paragraphs of the Notice of Appeal of 881751 Ontario Limited shall be struck as follows:

- a) under the heading “Material Facts - Charter Issues”, paragraphs 13, 14, 15 and 19 are struck;
- b) under the heading “Issues to be Decided”, paragraphs 4, 5, 6, 7 and 8 are struck;
- c) under the heading “Statutory Provisions”, except for the reference to section 8 and subsection 24(1) of the *Charter*, paragraph 4 is struck;
- d) under the heading “Reasons”, paragraph 5 is struck; and
- e) under the heading “Relief Sought”, paragraph 4 is struck.

3. Costs in the cause.

Signed at Ottawa, Canada, this 17th day of February 2021.

“Johanne D’Auray”

D’Auray J.

BETWEEN:

DENIS ROY

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion in Writing

Before: The Honourable Justice Johanne D'Auray

Parties:

Counsel for the Appellants: Gregory J. Ducharme
Counsel for the Respondent: Charlotte Deslauriers
Tanis Halpape

ORDER

UPON MOTION of the respondent for:

1. an Order striking out certain paragraphs of the Notice of Appeal pursuant to Rule 53 of the *Rules*, namely:
 - a) in the heading “Material Facts – Non-Charter Issues”, the words “–Non-Charter Issues”;
 - b) under the heading “Material Facts – Charter Issues”, paragraphs 12, 13, 14, 15, 16, 17 and 18;
 - c) the heading “Material Facts – Charter Issues”;
 - d) under the heading “Issues to be Decided”, paragraphs 4, 5, 6, 7, and 8;

- e) under the heading “Statutory Provisions”, paragraph 4;
 - f) under the heading “Reasons”, paragraph 4;
 - g) under the heading “Relief Sought”, paragraph 4 (collectively, the paragraphs of the Notice of Appeal cited above are referred to below as the “**impugned paragraphs**”); and
2. the respondent’s costs of this Motion.

UPON READING the materials filed by the appellants’ counsel and the respondent’s counsel;

THIS COURT ORDERS that:

1. The respondent is granted leave to file the Motion to strike parts of the Notice of Appeal of Denis Roy and;
2. The respondent’s Motion to strike parts of the Notice of Appeal of Denis Roy is allowed on the following bases:

The following paragraphs of the Notice of Appeal of Denis Roy shall be struck as follows:

- a) under the heading “Material Facts - Charter Issues”, paragraphs 12, 13, 14 and 18 are struck;
- b) under the heading “Issues to be Decided”, paragraphs 4, 5, 6, 7 and 8 are struck;
- c) under the heading “Statutory Provisions”, except for the reference to section 8 and subsection 24(1) of the *Charter*, paragraph 4 is struck;
- d) under the heading “Reasons”, paragraph 4 is struck; and
- e) under the heading “Relief Sought”, paragraph 4 is struck.

3. Costs in the cause.

Signed at Ottawa, Canada, this 17th day of February 2021.

“Johanne D’Auray”

D’Auray J.

Docket: 2017-4363(IT)G

BETWEEN:

881751 ONTARIO LIMITED

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2018-931(IT)G

AND BETWEEN:

DENIS ROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion in Writing

Before: The Honourable Justice Johanne D'Auray

Parties:

Counsel for the Appellants: Gregory J. Ducharme

Counsel for the Respondent: Charlotte Deslauriers
Tanis Halpape

ORDER

UPON MOTION of the appellants for:

1. An abridgment of the time for service of this Notice of Motion as required by Rule 67 of the *Rules*.
2. An Order that this Notice of Motion be heard in conjunction with the Respondent's Motion dated November 19, 2019, and in writing.
3. In the event that, with respect to the Respondent's Motion dated November 19, 2019, seeking an Order striking out certain paragraphs of the Notice of Appeal, the Court finds that the Appellants' Notices of Appeal are lacking particularity, an Order granting leave to the Appellants to amend their Notices of Appeal pursuant to Rule 54 of the *Rules*.

UPON READING the materials filed by the appellants' counsel and the respondent's counsel;

THIS COURT ORDERS:

1. That the appellants are granted leave to amend their Notices of Appeal; and
2. Costs in the cause.

Signed at Ottawa, Canada, this 17th day of February 2021.

“Johanne D'Auray”

D'Auray J.

Citation: 2021 TCC 9
Date: 20210217
Docket: 2017-4363(IT)G

BETWEEN:

881751 ONTARIO LIMITED

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2018-931(IT)G

AND BETWEEN:

DENIS ROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

D'Auray J.

[1] The appellants and the respondent have each filed Notices of Motion in these two related appeals.

[2] By letter dated December 21, 2020, the parties asked, pursuant to section 69 of the *Tax Court of Canada Rules (General Procedure)*, (the “*Rules*”), that their respective Motions be disposed of upon consideration of their written representations and without the appearance of the parties.

[3] The respondent has filed two Motions, one in respect of the appeal of 881751 Ontario Limited (“881751”) and the other with respect to the appeal of Mr. Denis Roy. The respondent filed a single set of written submissions addressing both Motions. In these Reasons for Order, I will refer to 881751 and Denis Roy collectively as “the appellants”.

[4] The appellants, who are represented by the same counsel, filed a single Motion and written submissions applicable to both appeals.

[5] The respondent’s Motions are to strike parts of the Notices of Appeal of the appellants pursuant to section 53 of the *Rules*. The respondent also seeks leave under section 8 of the *Rules* to file her Motions, since the irregularities in the pleadings which she alleges should have been attacked by the respondent before she filed her Lists of Documents and completed the examinations for discovery of the appellants.

[6] In their Motion, the appellants seek leave to amend their Notices of Appeals in the event that I decide to strike any allegations in their Notices of Appeal. The appellants also request that I address the respondent’s Motions and theirs at the same time.

[7] I will, as suggested by the appellants, address the respondent’s and the appellants’ Motions in one set of reasons. However, I will issue separate Orders.

[8] The first issue is whether the respondent should be given leave to file her Motions to strike. Section 53 of the *Rules* does not expressly state when a Motion to strike should be made. However, guidance is provided by section 8 of the *Rules* which tells us when such a Motion should not be filed absent leave of the Court. Section 8 reads as follows:

8. A motion to attack a proceeding or a step, document or direction in a proceeding for irregularity shall not be made,

(a) after the expiry of a reasonable time after the moving party knows or ought reasonably to have known of the irregularity, or

(b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity,

except with leave of the Court.

[9] In both appeals, the respondent has taken steps after the exchange of the pleadings. Lists of documents have been exchanged and the examinations for discovery completed in each. Therefore, the respondent requires leave under section 8 of the *Rules* to file her Motions.

[10] The respondent argues that leave should be granted since the Notices of Appeal contain allegations which are beyond the jurisdiction of the Court to entertain and that some of the allegations do not contain sufficient material facts that, if proven, could establish any *Canadian Charter of Rights and Freedoms* (“*Charter*”) breach.

[11] In their written submissions, the appellants neither oppose nor consent to the granting of leave. Their written submissions are silent on this point.

[12] The respondent is not attacking mere irregularities but the lack of the jurisdiction of the Court to entertain some of the allegations and the non-application of the *Charter* in the context of income tax assessments. These are substantial attacks on the appellants’ pleadings that the Court has to address. In light of this, I am of the view that the respondent’s Motions to strike should proceed.

[13] Authority to strike all or part of a pleading is found in section 53 of the *Rules*. It reads as follows:

53(1) The Court may, on its own initiative or on application by a party, strike out or expunge all or part of a pleading or other document with or without leave to amend, on the ground that the pleading or other document

- (a) may prejudice or delay the fair hearing of the appeal;
- (b) is scandalous, frivolous or vexatious;
- (c) is an abuse of the process of the Court; or
- (d) discloses no reasonable grounds for appeal or opposing the appeal.

(2) No evidence is admissible on an application under paragraph (1)(d).

(3) On application by the respondent, the Court may quash an appeal if

- (a) the Court has no jurisdiction over the subject matter of the appeal;

(b) a condition precedent to instituting an appeal has not been met; or

(c) the appellant is without legal capacity to commence or continue the proceeding.

[14] The test to strike a pleading, or a part thereof, is stringent. A pleading will only be struck if it is plain and obvious that the pleading discloses no reasonable cause of action or has no reasonable prospect of success.

[15] In a Motion to strike, the Court does not hear any evidence and assumes the facts pleaded to be true. The Court's approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. It is not the job of a Motions judge to determine if an argument is worth considering or to reach a conclusion on a disputed point of statutory interpretation. Therefore, for a Motion to strike to succeed, the irregularity or the irrelevancy must be clear and apparent at first glance.

[16] Keeping in mind the above principles, I will now determine if any of the allegations made by the appellants in their Notices of Appeal should be struck.

I. Respondent's Motions

[17] To facilitate the reading of these reasons, I have attached the appellants' Notices of Appeal as Annex 1.

[18] The respondent's position is that the allegations in the Notices of Appeal alleging wrongful conduct on the part of officials of the Canada Revenue Agency ("CRA") should be struck. The respondent argues that the Court does not have the jurisdiction to vacate assessments on the basis of such allegations.

[19] I agree with the respondent's position. The Court's jurisdiction is limited to the validity of the assessment. In other words, the Court can only examine whether the Minister of National Revenue correctly assessed the amount of taxes owed by a taxpayer. The conduct of the officials of the CRA is irrelevant in determining the amount of taxes owed by a taxpayer.

[20] This point is clearly made by the Federal Court of Appeal in *Main Rehabilitation Co. v R*, 2004 FCA 403 [*Main Rehabilitation*]. Justice Sharlow there stated that the Tax Court of Canada's role on a tax appeal is to consider the validity of the assessment and not the process by which it is established. At

paragraph 8 of her reasons for judgment, Justice Sharlow explained why this Court does not have jurisdiction with respect to the actions taken by CRA officials:

[8] This is because what is in issue in an appeal pursuant to section 169 is the validity of the assessment and not the process by which it is established (see for instance the *Queen v. the Consumers' Gas Company Ltd.* 87 D.T.C. 5008 (F.C.A.) at p. 5012). Put another way, the question is not whether the CCRA officials exercised their powers properly, but whether the amounts assessed can be shown to be properly owing under the Act (*Ludco Enterprises Ltd. v. R.* [1996] 3 C.T.C. 74 (F.C.A.) at p. 84).

[21] The principle enunciated in *Main Rehabilitation* was reaffirmed by the Federal Court of Appeal in *Ereiser v The Queen*, 2013 FCA 20. The Court of Appeal again clearly stated that wrongful conduct by a tax official is not relevant to the determination by the Tax Court of the validity or correctness of an assessment and that allegations of wrongful conduct of CRA officials have no place in the pleadings and should be struck.

[22] Therefore, all allegations that allege wrongful conduct on the part of officials of the CRA are struck. In the Notice of Appeal of 881751, these allegations are found at paragraphs 4-8, 13, 14, 15 and 19. In the Notice of Appeal of Denis Roy, the allegations are found at paragraphs 4-8, 12, 13, 14 and 18.

[23] In their Notices of Appeal, the appellants submit that their *Charter* rights were violated. The appellants allege that the audit was carried out from the beginning in a manner which made it a *de facto* tax evasion investigation and that the audit was phony. The appellants argue that the officials at the CRA used documents obtained during the civil audit to further a criminal investigation. The appellants' position is that in doing so, officials at the CRA violated their *Charter* rights under sections 7, 8 and 11(b) of the *Charter*.

[24] The respondent argues that as pleaded in their Notices of Appeal, the Court could not render a decision because the appellants have not alleged sufficient material facts for the Court to establish that their *Charter* rights were violated.

[25] In *Klundert v HMQ*, 2013 TCC 208 [*Klundert*], my colleague Pizzitelli J. faced a similar argument. He held that an appellant must make more than broad statements in his or her pleadings. The allegations in a Notice of Appeal must set out a concise statement of the material facts that an appellant is relying on in sufficient detail to allow the respondent and the Court to know and properly

address each cause of action in issue. The following passages from the reasons of Pizzitelli J. in *Klundert* are applicable to the Motions at bar:

[20] The Appellant must make more than broad statements inviting conjecture on the part of the Court. His pleadings must set out a concise statement of the material facts he relies on in sufficient detail to enable the Court and the Respondent to know each cause of action to properly address. Here, the Appellant has done no such thing. In *Simon v Canada*, 2011 FCA 6, 2011 DTC 5016, Dawson J.A. said at paragraph 18:

18. The requirement that a pleading contain a concise statement of the material facts relied upon is a technical requirement with a precise meaning at law. Each constituent element of each cause of action must be pleaded with sufficient particularity. A narrative of what happened and when it happened is unlikely to meet the requirements of the Rules. ...

[21] This sentiment was also expressed by the Federal Court of Appeal in *Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184, [2010] GST 105 (FCA), where Stratas J.A., relying on that Court's earlier decision in *Vojic v Canada (MNR)*, 87 DTC 5384 (FCA), confirmed that where a pleading "contains a set of conclusions, but does not provide any material facts for the conclusions", then "The bare assertion of a conclusion upon which the court is called upon to pronounce is not an allegation of a material fact".

[22] In *Nelson v Canada (Minister of Customs and Revenue Agency)*, 2001 DTC 5644, Rouleau J. also stated at paragraph 15:

15. ... Generally material facts in the statement of claim must be taken as true and in determining whether a reasonable cause of action is disclosed, cannot be based on assumptions and speculations and they cannot be taken as true simply because they are bold statements unless there is substantive facts to support the allegations. ...

[23] There is no evidence in the pleadings that would allow the Court to come to the conclusion the Appellant's *Charter* rights were violated. Unlike in *O'Neill Motors* above, here there is no admission of the Respondent that evidence was illegally obtained nor do we have a finding from the Ontario Superior Court of Justice as to same notwithstanding that the Appellant had multiple opportunities to plead such issue before both trial and appellate courts. In short, there is no evidence, finding or pleading that would permit this Court to find that the pleadings are sufficient to establish any cause of action. All we have is conjecture, speculation and innuendo. These are not enough to meet the threshold that the Appellant has any chance whatsoever to succeed in his claim.

[26] Sections 7, 8 and 11(b) of the *Charter* read as follows:

Section 7 - Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 8 - Everyone has the right to be secure against unreasonable search and seizure.

Section 11(b) - Any person charged with an offence has the right to be tried within a reasonable time.

[27] In addition, in *Gratl v HMQ*, 2010 TCC 491 [*Gratl*], Bowie J. of this Court held that section 7 of the *Charter* did not apply to a tax audit and struck a paragraph and a consequential reference to section 7 in Ms. Gralt's Notice of Appeal. Justice Bowie wrote:

3. ... It is, however, plain and obvious that her reliance on sections 7, 12 and 15 of the Charter is foreclosed by authority. In *Tyler v. M.N.R.*[91 DTC 5022] the Federal Court of Appeal noted the distinction between criminal proceedings and a tax audit, and held that in the case of a tax audit, which is a purely an administrative proceeding, there is no suspect and no accused; see also *Kaulius v. The Queen* [2003 DTC 564 (FCA)]. Section 7 simply does not apply to the tax audit process.

[28] Bowie J.'s decision in *Gratl* was upheld by the Federal Court of Appeal.¹ Sharlow J. for the Court of Appeal concluded that an income tax assessment is a civil matter involving only economic interests. It does not deprive the assessed person of life, liberty or security of the person within the meaning of section 7 of the *Charter*. She reasoned as follows:

[6] The appellant argues that the Tax Court has the jurisdiction to grant remedies based on the *Charter*. We agree that the Tax Court has the legal authority to grant a *Charter* remedy. However, we also agree with Justice Bowie's conclusion that it is plain and obvious that an order vacating or varying an assessment of tax, administrative penalties and interest cannot be justified by section 7 or 12 of the *Charter*. In other words, even if it is assumed that the facts alleged in paragraph 5 of the third amended notice of appeal are true, they disclose no breach of section 7 or 12 of the *Charter*.

¹ *Gralt v HMQ*, 2012 FCA 88.

...

[8] Under the *Income Tax Act* as it now reads, and as it read in 2001 and 2002, an income tax assessment is a civil matter involving only economic interests. It does not deprive the assessed person of life, liberty or security of the person within the meaning of section 7 of the *Charter*, and it does not place the assessed person under state control in a manner that could possibly be considered treatment or punishment within the meaning of section 12 of the *Charter*.

[29] A similar conclusion was reached by the Federal Court of Appeal in *Bauer v Canada*, 2018 FCA 62, where the Court explained when *Charter* rights might come into play in tax matters. Webb J.A. explained at paragraph 15 of his reasons:

... [a] taxpayer's *Charter* rights are engaged when an audit becomes a criminal investigation". Since these *Charter* rights are engaged when this criminal investigation commences, these *Charter* rights, that could affect the admissibility of documents in court proceedings, must relate to proceedings arising from this criminal investigation and not to proceedings that do not relate to the commission of a criminal offence under the *ITA* or the Excise Tax Act.

[30] For subsection 11(b) of the *Charter* to apply, a person has to be charged with an offence. That is simply not the situation here.

[31] What is in issue in these appeals is the amount of the tax assessed, a civil procedure. Therefore, I agree with the respondent that the allegations and the references to sections 7 and 11(b) of the *Charter* in the Notices of Appeal of the appellants should be struck.

[32] The above being said, the appellants are correct in submitting that the conduct of officials of the CRA may in certain situations be raised in a civil matter. Some conduct may affect the validity of the assessment, namely the amounts of taxes owed by a taxpayer. For example, section 8 of the *Charter* has been raised in situations where the Minister, after the normal reassessment period, reassessed relying only on documents obtained under an illegal search warrant.² Such reassessments were invalidated by the Courts. While this does not appear to be the case in these appeals, I am mindful that on a Motion to strike, the Court should not prevent parties from pleading novel arguments so long as they are arguable. In light of this, I will not strike the paragraphs that could lead to an argument under

² See *O'Neill Motors Ltd. v HMQ*, 1998 FCA 180, *Brown v R*, 2013 FCA 111 and *SFP Valeur Assurable et Robert Plante v SMR*, 2019 CCI 174 (the decision has not yet been translated in English and is under appeal before the Federal Court of Appeal).

section 8 of the *Charter*. Accordingly, paragraphs 16, 17 and 18 of the 881751 Notice of Appeal and paragraphs 15, 16 and 17 of the Denis Roy Notice of Appeal may remain.

[33] The respondent also submits that certain of the allegations in the appellants' Notices of Appeal do not contain material facts that evidence a cause of action. The respondent argues that it is plain and obvious that the appellant's allegations suggesting unlawful conduct such as, the audit was phony and it was a de facto tax evasion investigation from the beginning, cannot succeed because the pleadings do not contain sufficient material facts that if proven, could establish unlawful conduct.

[34] I agree with the respondent's that many of the paragraphs under the heading Material Facts – Charter Issues in the Notices of Appeal of the appellants do not contain sufficient material facts that evidence a cause of action. That being said, I already struck these paragraphs. Some were struck on the basis that the appellants could not raise section 7 or subsection 11(b) of the *Charter* and others were struck because the wrongful conduct of the CRA officials does not have any impact on the validity of an assessment.

II. Appellants' Motion to amend

[35] I will grant the appellants leave to amend their Notices of Appeal. Although, as mentioned above, I doubt that the appellants have an argument based on section 8 of the *Charter*, I did not strike the paragraphs that could lead to an argument under section 8. I however remind the appellants that the *Rules* require them to plead material facts in support of their allegations with respect to section 8 of the *Charter*.

III. Disposition

[36] Leave is granted. The respondent's Motions to strike parts of the Notices of Appeal of 881751 and Denis Roy are validly filed with this Court.

[37] The respondent's Motions to strike parts of the Notice of Appeal of 881751 is allowed on the following bases:

The following paragraphs of the Notice of Appeal of 881751 Ontario Limited shall be struck as follows:

- a) under the heading “Material Facts - Charter Issues”, paragraphs 13, 14, 15 and 19 are struck;
- b) under the heading “Issues to be Decided”, paragraphs 4, 5, 6, 7 and 8 are struck;
- c) under the heading “Statutory Provisions”, except for the reference to section 8 and subsection 24(1) of the *Charter* paragraph 4 is struck;
- d) under the heading “Reasons”, paragraph 5 is struck; and
- e) under the heading “Relief Sought”, paragraph 4 is struck.

Costs in the cause.

[38] The respondent’s Motions to strike parts of the Notice of Appeal of Denis Roy is allowed on the following bases:

The following paragraphs of the Notice of Appeal of Denis Roy shall be struck as follows:

- a) under the heading “Material Facts - Charter Issues”, paragraphs 12, 13, 14 and 18 are struck;
- b) under the heading “Issues to be Decided”, paragraphs 4, 5, 6, 7 and 8 are struck;
- c) under the heading “Statutory Provisions”, except for the reference to section 8 and subsection 24(1) of the *Charter* paragraph 4 is struck;
- d) under the heading “Reasons”, paragraph 4 is struck; and
- e) under the heading “Relief Sought”, paragraph 4 is struck.

Costs in the cause.

[39] The Motion of the appellants requesting leave to amend their Notices of Appeal, is granted in accordance with the above reasons. Costs in the cause.

Signed at Ottawa, Canada, this 17th day of February 2021.

“Johanne D’Auray”

D’Auray J.

TAX COURT APPEAL -- GENERAL PROCEDURE

TAX COURT OF CANADA

BETWEEN:

881751 ONTARIO LIMITED

Fm #433393 AD

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent



NOTICE OF APPEAL

(a) Name and Address of the Appellant

886 Suez Drive
Hanmer, ON P3P 1Y7

BN# 12359 0598 RC0001

(b) Original ReassessmentsDate

May 30, 2012
May 30, 2012
May 30, 2012

Taxation Year

March 31, 2006
March 31, 2007
December 31, 2007

Subsequent ReassessmentsDate

August 1, 2017
August 1, 2017
August 1, 2017

Taxation Year

March 31, 2006
March 31, 2007
December 31, 2007

(c) Material Facts- Non-Charter Issues

1. The Appellant is a Canadian controlled private corporation. Mr. Denis Roy was the principal shareholder and directing mind of the Appellant up to December 31, 2007. Mr. Mike Labelle became the sole shareholder and directing mind of

the Appellant thereafter.

2. The Appellant carries on the business of buying and selling scrap metal.
3. On or about May 30, 2012, the Appellant's taxation years ending March 31, 2006, March 31, 2007 and stub-year ending December 31, 2007 were reassessed by the Canada Revenue Agency. These reassessments were effected more than three years after the date of initial assessment (ie: the assessment which arose on the filing of the returns).
4. Notices of Objection relating to the aforementioned reassessments were properly prepared and filed pursuant to which fresh reassessments for the above noted periods of time were issued on or about August 1, 2017. This Notice of Appeal is an appeal against these (August 1, 2017) reassessments and therefore by implication, the original reassessments.
5. Among other things the August 1 2017 reassessments asserted unreported income and disallowed expenses as follows:

	2006-03-31	2007-03-31	2007-12-13
Unreported Income	\$212,663.25	\$ 85,289.21	\$249,581.93
Expenses disallowed	<u>17,503.13</u>	<u>33,583.41</u>	<u>7,483.96</u>
Total:	\$230,166.38	\$118,872.62	\$257,065.89

6. The Appellant's tax returns as originally filed correctly and fully set out all corporate revenue and expenses having regard to accounting and tax law principles. The taxable income of the Appellant for each of these three financial periods was correctly and fully reported on the original returns filed.
7. Denis Roy, during the period which is under appeal, used funds drawn from his personal bank account to buy inventory for the Appellant. This inventory was sold by the Appellant. The taxable income as determined by Canada Revenue Agency does not give proper credit for the costs attributable to inventory purchased with these funds.
8. Among other things, these reassessments invoked Paragraph 18(1)(a) and 18(1)(h) of the Act on the basis of the Canada Revenue Agency's view that the Appellant had incurred expenses relating to the person of Denis Roy which were not deductible in arriving at the taxable income of the Appellant.
9. During the period which is under appeal the Appellant laid out and incurred expenses which were fully relating to the business (and not personal) of the Appellant and which were deductible in arriving at its income and further which

were not prohibited by Paragraphs 18(1)(a) and 18(1)(h) of the Act. Some of these expenses were not claimed in the original corporate tax returns.

10. The aforementioned reassessments invoked penalties pursuant to subsection 163(2) of the Act. The fact is that the Appellant did not knowingly or under circumstances amounting to gross negligence make or participate in, ascent to or acquiesce in the making of a false statement or omission in its tax returns. Mr Denis Roy is an honest man who is unsophisticated regarding accounting and tax knowledge. Any errors made (which is denied) were a function of innocence, ignorance, and simple mistake and not gross negligence or willfulness.
11. The Canada Revenue Agency predicated the reassessments upon its views that the preconditions in Ss. 152(4) were met in this case. The fact is that the Appellant did not make a misrepresentation and if one was made (which is denied) it was not attributable to neglect, carelessness, willful default or fraud. If a misrepresentation was made (which is denied) it was a function of innocence, ignorance and simple mistake.

Material Facts – Charter Issues

12. The reassessments of May 30, 2012 were the result of an audit commenced in 2007 by officers of the Canada Revenue Agency.
13. This audit was carried out from the beginning in a manner which made it a de facto tax evasion investigation. Evidence was gathered under the auspices of a civil audit. The audit was phony.
14. The audit was motivated by malice as against Denis Roy and the Appellant. The steps taken by the Canada Revenue Agency were malicious, high handed and improper.
15. The audit did not follow proper or routine Canada Revenue Agency protocol. Such deviation from proper or routine protocol was effected in order to hide the fact that a tax evasion investigation was being carried out.
16. The Appellant was not warned that it was under investigation until May 3rd 2010. Search warrants were obtained by Canada Revenue Agency and executed as against the Appellant and others on May 18th 2010.
17. Pursuant to the execution of those warrant documents information was obtained by the Canada Revenue Agency.

18. Tax evasion charges were never laid against the Appellant nor any of its associates.
19. The information obtained by way of the phony audit and the execution of the search warrants was used to issue punitive reassessments against the Appellant.
20. Other facts which will be made known at or before trial.

(d)

Issues to be Decided

1. What is the taxable income of the Appellant for the taxation years March 31, 2006, March 31, 2007 and stub-year ending December 31, 2007?
2. In the circumstances, do the preconditions set out Subsection 163(2) of the Act exist such that gross negligence penalties ought to be applied as against the Appellant? Should all penalties be vacated?
3. Are the reassessments referred to above statute barred or do the requisite conditions set out in Ss.152(4) exist so as to validate this reassessment? Should all reassessments be vacated?
4. During the audit period did the Canada Revenue Agency conduct a de facto tax evasion investigation?
5. During the audit period did the Canada Revenue Agency engage in conduct which was high-handed, malicious and/or improper?
6. Did any conduct of the Canada Revenue Agency violate protection that the Canadian Charter of Rights and Freedoms offers to a Corporation or its officers and directors?
7. If the answer to issue #4, #5, or #6 above is yes then should all reassessments be vacated?
8. If the answer to issue #4 above is yes should some or all of the evidence which was obtained be excluded and should the Canada Revenue Agency be required to demonstrate a basis for reassessment without the benefit of said evidence, failing which all reassessments should be vacated?
9. Other issues which will be made known prior to trial.

(e) Statutory Provisions

1. Section 9 of the *Income Tax Act of Canada*
2. Paragraphs 18(1)(a) and 18(1)(h) of the *Income Tax Act of Canada*
2. Subsection 163(2) of the *Income Tax Act of Canada*.
3. Subsection 152(3.1), (4) of the *Income Tax Act of Canada*.
4. *Canadian Charter of Rights and Freedoms* Ss.7,8,11(b),and 24(1)
5. Other provisions which will be made known prior to trial.

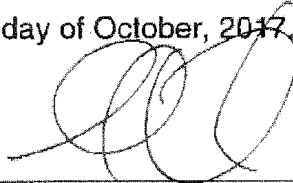
(f) Reasons

1. In all circumstances, all expenses claimed by the Appellant are deductible by the Appellant and are in all circumstances necessary business expenditures relating to the business of the Appellant. In all cases, these expenses are not personal expenses. Accordingly, Paragraphs 18(1)(a) and 18(1)(h) have no application to the circumstances faced by the Appellant.
2. Section 9 of the *Income Tax Act of Canada*, R.S.C. 1985 c. 1 (5th Supplement) (the "Act") requires that the cost of inventory (sold by the Appellant) borne directly by Mr Denis Roy be deducted in the determination of income.
3. The preconditions required by Subsection 163(2) of the Act are not present in these circumstances and accordingly gross negligence penalties cannot be invoked as against the Appellant.
4. The reassessments under appeal are void as they were issued more than three years from the date of the mailing of the original assessment and the requisite conditions of Ss. 152(4) do not exist.
5. The conduct of Canada Revenue Agency in the audit of the Appellant, was such that it constituted a violation of the Appellant's and its officers and directors constitutionally protected rights as detailed in the Charter of Rights and Freedoms and as such the reassessments which were procured as a result of that conduct ought to be quashed or otherwise limited. In this regard the Appellant invokes the ratio set out in *R. v. Jarvis* [2002] 3 SCR 757 and *R. v. Ling*, [2002] 3 SCR 814 and *O'Neill Motors Ltd. v. R.* 98 DTC 6424 FCA
6. Other reasons which will be demonstrated at or before trial.

(g) **Relief Sought**

1. The Appellant requests that the matter be referred back to the Minister of National Revenue for reassessment on the basis that the tax returns were correct as initially filed.
2. That this appeal be allowed on the basis that the reassessments are statute barred.
3. This appeal be allowed on the basis that all penalties which were levied be reversed.
4. This appeal be allowed on the basis that all reassessments be quashed in view of the violations by the Canada Revenue Agency of the Appellant's rights and the rights of its officers and directors as protected by the Canadian Charter of Rights and Freedoms.
5. The Appellant pleads its costs in this matter.
6. Other relief sought which will be made known at or before trial.

(h) Dated at North Bay this 30th day of October, 2017.



GREGORY J. DUCHARME
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North Bay, Ontario P1B 2Z3

Attention: Mr. Gregory J. DuCharme
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Fax: (800) 673-2806
Solicitor for the Appellant

TO: Her Majesty the Queen in
Right of Canada, Attention
the Attorney General of Canada

IN THE TAX COURT OF CANADA

BETWEEN:

881751 ONTARIO LIMITED
Appellant

- and -

HER MAJESTY THE QUEEN
Respondent

NOTICE OF APPEAL

GREGORY J. DUCHARME
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Counsel for the Appellant

TAX COURT APPEAL -- GENERAL PROCEDURE

TAX COURT OF CANADA

BETWEEN:

DENIS ROY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent



NOTICE OF APPEAL

(a) Name and Address of the Appellant

5512 Capreol Road
Hanmer, ON P3P 1Y7

SIN# 455 638 585

(b) Original Reassessments

<u>Date</u>	<u>Taxation Year</u>
May 28, 2012	2005
May 28, 2012	2006
May 28, 2012	2007

Subsequent Reassessments

<u>Date</u>	<u>Taxation Year</u>
December 13, 2017	2005
December 13, 2017	2006
December 13, 2017	2007

(c) Material Facts- Non-Charter Issues

1. The Appellant was the principal shareholder and directing mind of 881751 Ontario Limited up to December 31, 2007. Mr. Mike Labelle became the sole shareholder and directing mind of 881751 Ontario Limited thereafter.

2. Throughout the relevant period 881751 Ontario Limited carried on the business of buying and selling scrap metal.
3. On or about May 28, 2012, the Appellant's 2005, 2006 and 2007 taxation years were reassessed by the Canada Revenue Agency. These reassessments were effected more than three years after the date of initial assessment (ie: the assessment which arose on the filing of the returns).
4. Notices of Objection relating to the aforementioned reassessments were properly prepared and filed pursuant to which fresh reassessments for the above noted periods of time were issued on or about December 31, 2017. This Notice of Appeal is an appeal against these (December 31, 2017) reassessments and therefore by implication, the original reassessments.
5. The December 13, 2017 reassessments were based on Canada Revenue Agency's determinations as follows:

	2005	2006	2007
Income amounts appropriated	\$213,158.00	\$ 111,749.00	\$225,210.00
Personal Expenses paid by 881751 Ontario Limited	<u>8,936.00</u>	<u>22,199.00</u>	<u>6,369.00</u>
Total:	\$222,094.00	\$ 133,948.00	\$231,579.00

6. The Appellant's tax returns as originally filed correctly and fully set out all of his income and expenses having regard to accounting and tax law principles. The taxable income of the Appellant for each of these three taxation years was correctly and fully reported on the original returns filed.
7. The Appellant, during the period which is under appeal, used funds drawn from his personal bank account to buy inventory for 881751 Ontario Limited. This inventory was sold by 881751 Ontario Limited. The taxable income as determined by Canada Revenue Agency does not recognize this fact.
8. Among other things these reassessments invoked Ss. 15(1) of the *Income Tax Act of Canada* (the "Act") based on Canada Revenue Agency's view that the Appellant had received benefits from 881751 Ontario Limited.
9. The aforementioned reassessments invoked penalties pursuant to subsection 163(2) of the Act. The fact is that the Appellant did not knowingly or under circumstances amounting to gross negligence make or participate in, ascent to or acquiesce in the making of a false statement or omission in his tax returns. The Appellant is an honest man who is unsophisticated regarding accounting

and tax knowledge. Any errors made (which is denied) were a function of innocence, ignorance, and simple mistake and not gross negligence or willfulness.

10. The Canada Revenue Agency predicated the reassessments upon its views that the preconditions in Ss. 152(4) of the Act were met in this case. The fact is that the Appellant did not make a misrepresentation and if one was made (which is denied) it was not attributable to neglect, carelessness, willful default or fraud. If a misrepresentation was made (which is denied) it was a function of innocence, ignorance and simple mistake.

Material Facts – Charter Issues

11. The reassessments of May 28, 2012 were the result of an audit commenced in 2007 by officers of the Canada Revenue Agency.
12. This audit was carried out from the beginning in a manner which made it a de facto tax evasion investigation. Evidence was gathered under the auspices of a civil audit. The audit was phony.
13. The audit was motivated by malice as against the Appellant and 881751 Ontario Limited. The steps taken by the Canada Revenue Agency were malicious, high handed and improper.
14. The audit did not follow proper or routine Canada Revenue Agency protocol. Such deviation from proper or routine protocol was effected in order to hide the fact that a tax evasion investigation was being carried out.
15. The Appellant was not warned that he was under investigation until May 3rd 2010. Search warrants were obtained by Canada Revenue Agency and executed as against the Appellant.
16. Pursuant to the execution of those warrant documents information was obtained by the Canada Revenue Agency.
17. Tax evasion charges were never laid against the Appellant nor 881751 Ontario Limited.
18. The information obtained by way of the phony audit and the execution of the search warrants was used to issue punitive reassessments against the Appellant.

19. Other facts which will be made known at or before trial.

(d) **Issues to be Decided**

1. What is the taxable income of the Appellant for the taxation years 2005, 2006 and 2007?
2. In the circumstances, do the preconditions set out Subsection 163(2) of the Act exist such that gross negligence penalties ought to be applied as against the Appellant? Should all penalties be vacated?
3. Are the reassessments referred to above statute barred or do the requisite conditions set out in Ss.152(4) exist so as to validate this reassessment? Should all reassessments be vacated?
4. During the audit period did the Canada Revenue Agency conduct a de facto tax evasion investigation?
5. During the audit period did the Canada Revenue Agency engage in conduct which was high-handed, malicious and/or improper?
6. Did any conduct of the Canada Revenue Agency violate protection that the Canadian Charter of Rights and Freedoms offers to a Corporation or its officers and directors?
7. If the answer to issue #4, #5, or #6 above is yes then should all reassessments be vacated?
8. If the answer to issue #4 above is yes should some or all of the evidence which was obtained be excluded and should the Canada Revenue Agency be required to demonstrate a basis for reassessment without the benefit of said evidence, failing which all reassessments should be vacated?
9. Other issues which will be made known prior to trial.

(e) **Statutory Provisions**

1. Section 9 of the *Income Tax Act of Canada*
2. Section 15 of the *Income Tax Act of Canada*
2. Subsection 163(2) of the *Income Tax Act of Canada*.

3. Subsection 152(3.1), (4) of the *Income Tax Act of Canada*.
4. *Canadian Charter of Rights and Freedoms* Ss.7,8,11(b),and 24(1)
5. Other provisions which will be made known prior to trial.

(f) **Reasons**

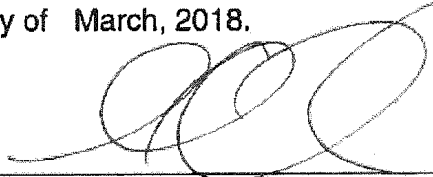
1. The Appellant did not receive any benefits from 881751 Ontario Limited.
2. The preconditions required by Subsection 163(2) of the Act are not present in these circumstances and accordingly gross negligence penalties cannot be invoked as against the Appellant.
3. The reassessments under appeal are void as they were issued more than three years from the date of the mailing of the original assessment and the requisite conditions of Ss. 152(4) of the Act do not exist.
4. The conduct of Canada Revenue Agency in the audit of the Appellant, was such that it constituted a violation of the Appellant's constitutionally protected rights as detailed in the Charter of Rights and Freedoms and as such the reassessments which were procured as a result of that conduct ought to be quashed or otherwise limited. In this regard the Appellant invokes the ratio set out in *R. v. Jarvis* [2002] 3 SCR 757 and *R. v. Ling*, [2002] 3 SCR 814 and *O'Neill Motors Ltd. v. R.* 98 DTC 6424 FCA
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Rights and Freedoms.

5. The Appellant pleads his costs in this matter.
 6. Other relief sought which will be made known at or before trial.
- (h) **The Appellant requests that this matter be heard at the same time as the appeal of 881751 Ontario Limited v. Her Majesty the Queen (Court File No. 2017-4363(IT)G) as they are related.**
- (i) Dated at North Bay this 8th day of March, 2018.



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Solicitor for the Appellant

TO: Her Majesty the Queen in
Right of Canada, Attention
the Attorney General of Canada

IN THE TAX COURT OF CANADA

BETWEEN:

DENIS ROY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL

**GREGORY J. DUCHARME
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Counsel for the Appellant**

CITATION: 2021 TCC 9

COURT FILE NO.: 2017-4363(IT)G, 2018-931(IT)G

STYLE OF CAUSE: 881751 ONTARIO LIMITED and HER MAJESTY THE QUEEN
DENIS ROY and HER MAJESTY THE QUEEN

PLACE OF HEARING: Motions in Writing

DATE OF HEARING: N/A

REASONS FOR ORDER BY: The Honourable Justice Johanne D'Auray

DATE OF ORDER: February 17, 2021

APPEARANCES:

Counsel for the Appellants: Gregory J. Ducharme
Counsel for the Respondent: Charlotte Deslauriers and Tanis Halpape

COUNSEL OF RECORD:

For the Appellants:

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Firm: Gregory J. Ducharme Professional Corporation
North Bay, Ontario

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada